



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,993	08/27/2003	David J. Schneider	P755-2/HSC'H 2 00007	4365
27885	7590	12/15/2009		
FAY SHARPE LLP 1228 Euclid Avenue, 5th Floor The Halle Building Cleveland, OH 44115			EXAMINER ANDERSON, JAMES D	
			ART UNIT	PAPER NUMBER
			1614	
			MAIL DATE	DELIVERY MODE
			12/15/2009 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/648,993	<b>Applicant(s)</b> SCHNEIDER, DAVID J.
<b>Examiner</b> JAMES D. ANDERSON	<b>Art Unit</b> 1614

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 December 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 43-48 and 50.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/James D Anderson/  
Examiner, Art Unit 1614

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments after Final rejection have been considered but are not persuasive. As a first matter, Applicant states that he may have misunderstood the rejection presented in the previous Office Action (Arsem and Marks in view of Katzen). Applicants asserts that this could be construed as two rejections: Arsem in view of Katzen and Marks in view of Katzen. Applicant is correct that the Examiner is applying ONE 103(a) rejection that combined all three references, i.e., Arsem AND Marks IN VIEW OF Katzen. The basis for the this rejection is that the teachings of both Arsem and Marks are taken in view of the teachings of Katzen. Applicant argues that the recitation of "controlling Darkling beetles" in the preamble should be given patenable weight because it is not merely a statement of intended use, but rather a statement that gives life and meaning to the claims. This is not deemed to be persuasive because the recitation of "controlling Darkling beetles" does NOT require that Drakling beetles be present in the animal habitat being treated. For example, one can "control" Darkling beetles by not allowing them to enter and breed in the animal habitat. As such, treating an animal habitat with trichloromelamine as suggested and motivated by the cited prior art necessarily will have the effect of "controlling Darkling beetles" as recited in the instant claims. Applicant further argues that there is no motivation to apply trichloromelamine based on the references. Applicant argues that the Examiner's motivation is to use the composition of TCM and citric acid disclosed in Marks to treat animal bedding as taught in Katzen. However, Applicant argues that Katzen only requires the acid disclosed in Marks and makes no statement regarding the need to include TCM as well. This is not deemed persuasive because Marks discloses using TCM as a germicidal and disinfectant agent, preferably employed at a pH below 5 by using citric acid as a buffering agent. Katzen discloses treating animal or poultry waste contained in a dropping pit or sedimentation tank of an animal or poultry confinement of holding pen with a sufficient amount of acid to achieve and maintain the animal or poultry waste at a pH of about 4. One skilled in the art would recognize the benefit of applying a composition comprising TCM and citric acid in the methods of Katzen. The skilled artisan would expect that an application of TCM and citric acid to animal bedding would have the effect of not only treating animal waste but would also provide beneficial germicidal and disinfectant effects. Because the cited references teach and suggest applying TCM and citric to maintain a pH of below 4-5, the effect of "controlling Darkling beetles" would be a natural result of such application.